IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP NO.827 Of 2005.

Date of decision 3.1.2006.

Sh. Bharat Darshan and others ……. Petitioners.

Vs.

H.P. State Electricity Board & others ……. Respondents.

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The Hon'ble Mr.V.K. Jhanji, Judge.

The Hon'ble Mr.Justice Surjit Singh, Judge.

Whether approved for reporting?

For the petitioner: Mr. J.L.Bhardwaj, Advocate.

For respondent No.1 Mr. K.S.Rathore, Advocate.

For respondents 2&3 Mr. Kuldip Singh, Sr. Advocate, with Mr. Bimal Gupta, Advocate.

V.K.Jhanji, J.(Oral).

The writ petition is directed against order dated May 18, 2005, passed by the H.P. State Administrative Tribunal, Shimla, whereby respondent - Himachal Pradesh State Electricity

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Whether Reporters of local Papers may be allowed to see the judgment?

Board (hereafter referred to as 'the Board') has been directed to reckon the seniority of respondent No. 2 from the year 1987 and that of respondent No. 3 from the year 1988, as approved by the Departmental Promotion Committee (hereafter referred to as 'the DPC') in its meeting held in 1994.

In brief, the facts are that respondents 2 and 3 had been working as Junior Engineers in the Board since 1965. During the course of their service, they acquired AMIE qualification. Accordingly they were promoted as Assistant Engineers on adhoc basis in 1987 and 1988 respectively against the quota meant for Junior Engineers with AMIE qualification. It is not in dispute that for the category of Junior Engineers with AMIE qualification, quota prescribed was 6% under the Recruitment and Promotion Rules, 1983. Vide order dated October 18, 1994, on the recommendation of the DPC, respondents 2 and 3 were promoted as Assistant Engineers with effect from 18.10.1994. Respondents 2 and 3 being aggrieved of their promotion with effect from 18.10.1994

made representation to the Board, submitting therein that the last regular promotion from the quota of Junior Engineers of AMIE category was made during 1985, although direct recruitments were made during 1985, 1986, 1987 and 1989. Further according to respondents 2 and 3, adequate number of posts of Assistant Engineers as per quota prescribed for AMIE Junior Engineers were available from 1985 onwards, but regular promotions were made in the year 1994. They further submitted that there are instructions that if DPC is not held at regular intervals and is held subsequently after a number of years, then the DPC is required to take into account the number of vacancies becoming available during each of the preceding year(s), considering eligible persons becoming eligible against the vacancies of such year(s). They thus submitted that if the seniority is reckoned with effect from October 18, 1994, they would be relegated below the direct recruits of 1989, which would be most unjust and unreasonable. They accordingly prayed that their claim for regular promotion

to the posts of Assistant Engineer(s) from the due date(s) when the vacancy became available, be considered and they be also given all consequential benefits including benefit of seniority from the due date(s). Respondent Board did not take any action on the representation of respondents, which led to the filing of Original Application before the H.P. Administrative Tribunal, Shimla and by the impugned order, Board has been directed to reckon the seniority of respondents 2 and 3 with effect from 1987 and 1988 respectively.

Being aggrieved of the order of Administrative Tribunal, petitioners who are direct recruits have filed the present writ petition, whereas the Board having accepted the order of the Administrative Tribunal has not filed any writ petition. It deserves to be mentioned at this stage that the present petitioners though were party before the Administrative Tribunal, but had not filed any reply, nor had contested the claim of respondents 2 and 3.

Learned counsel for the petitioners contended that respondents 2 and 3 were promoted in the year 1987 and 1988 respectively only on adhoc basis and while making promotions, it was made clear that adhoc promotions will not confer any right of seniority to the post of Assistant Engineer on them. Thus according to the learned counsel for the petitioner, respondents 2 and 3 having accepted adhoc promotions, are estopped to challenge the action of the Board in not giving them seniority from the date(s) they were promoted on adhoc basis. Learned counsel for the petitioners also referred to Instructions dated 2.8.1995 wherein it is provided that seniority of a government servant shall be assigned from the date of regular appointment/ promotion in the grade concerned and not from the date of adhoc appointment/ promotion. According to learned counsel for the petitioner, said Instructions are also applicable to the Board and thus no relief could have been granted to respondents 2 and 3.

On the other hand, learned counsel for respondents 2 and 3 contended that respondents 2 and 3 cannot be made to suffer because of inaction on the part of the Government in not convening the DPC for considering their case for promotion to the posts of Assistant Engineer from the quota of 6% belonging to Junior Engineers with AMIE, though the posts were available on the date(s) when respondents 2 and 3 were promoted on adhoc basis and they were fully qualified and eligible to be promoted as such on regular basis.

We have heard the learned counsel for the parties. Two questions arise for our consideration, i.e. whether in the facts and circumstances of the case, respondents 2 and 3 are entitled to seniority on the posts of Assistant Engineer from the dates they have been appointed on adhoc basis or from the dates they were selected and approved by the DPC? The other question would be whether respondents 2 and 3 can be deprived of the benefit of their adhoc service prior to the approval by the DPC

for the purpose of seniority, in view of the fact that delay in granting approval for making them regular on the post of Assistant Engineer was attributable to the State Government or the DPC, though respondents 2 and 3 were fully qualified to be appointed and approved to the post of Assistant Engineers even on the date they were appointed as such on adhoc basis?

It is not in dispute that on the date(s) respondents 2 and 3 were promoted on adhoc basis, posts in the quota of AMIE Junior Engineers category to which they belonged, were available, but they were not promoted on regular basis because DPC did not meet. It is only in 1994 that DPC met and found respondents 2 and 3 fit for promotion and approved of their promotion. Their promotion was not made as a stop gap arrangement, but it was according to the Rule which provided 6% quota for promotion to AMIE Junior Engineers. Respondents 2 and 3 being fully qualified and eligible and their promotion being in accordance with Rule, their seniority had to be counted from the date(s) of their appointments on adhoc basis and not from

the date the DPC approved their promotion. In this regard, reference may be made to Direct Recruit Class II Engineering Officers' Association versus State of Maharashtra and others (1990) 2 SCC 715, wherein the Constitution Bench held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. In such circumstances, we have no hesitation to hold that Administrative Tribunal committed no error in law in giving benefit to respondents 2 and 3 of their service on adhoc basis. The Instructions on which the learned counsel for the petitioners is relying are contrary to the law laid down by the Supreme Court in Direct Recruit's case (supra) and therefore, are of no help to the petitioners.

For the fore-going reasons, there is no merit in the writ petition which is accordingly dismissed. No costs. Pending

application(s) shall also stand dismissed, in view of the dismissal of the writ petition.

(V.K.Jhanji), J.

January 3, 2005 (PC). (Surjit Singh),J.